

ASSEMBLY BILL

No. 239

Introduced by Assembly Member Kaloogian

January 28, 1999

An act to amend Sections 2357, 2580, 8465, and 17200 of, to add Part 18 (commencing with Section 825) to Division 2 of, and to repeal Section 7200 of, the Probate Code, relating to estates and trusts.

LEGISLATIVE COUNSEL'S DIGEST

AB 239, as introduced, Kaloogian. Estates and trusts.

(1) Existing case law provides that a right to jury trial in a civil matter exists only where that right existed at common law; jury trials in probate proceedings were unknown to common law. Existing statutory law specifies that there is no right to a jury trial in proceedings under the Probate Code concerning the administration of a decedent's estate, except as otherwise expressly provided in the Probate Code.

This bill would revise existing statutory law to specify that there is no right to a jury trial in proceedings under the Probate Code, except as otherwise expressly provided in the Probate Code.

(2) Existing law requires a petition for court authorization of specified medical treatment for a ward or conservatee to include specified information. Existing law requires the court, upon the filing of the petition, to notify the attorney of record for the ward or conservatee or appoint the public defender or private counsel to consult with and represent the ward or conservatee. It also authorizes a hearing on the petition to be

held pursuant to an order of the court prescribing the notice to be given.

This bill would specify additional information to be included in the petition, and would revise the notice requirements, as specified.

(3) Under existing law, a court may authorize or require a conservator to take a proposed action for specified purposes, including the exercise or surrender of the right of the conservatee to revoke a revocable trust under specified conditions.

This bill would include within these purposes, the exercise or surrender of the right of the conservatee to modify a revocable trust under specified conditions.

(4) Existing law authorizes a court to appoint as administrator a person nominated by a person otherwise entitled to appointment or by the guardian or conservator of the estate of a person.

This bill would revise this authorization, as specified.

(5) Under existing law, a trust instrument may be amended in order to qualify a decedent's estate for the charitable estate tax deduction under federal law in any case in which all parties interested in the trust have submitted written agreement to the proposed changes or written disclaimer of interest.

This bill would delete the written agreement or disclaimer requirement.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Part 18 (commencing with Section 825)
2 is added to Division 2 of the Probate Code, to read:

3

4

PART 18. RIGHT TO TRIAL

5

6 825. Except as otherwise expressly provided in this
7 code, there is no right to a jury trial in proceedings under
8 this code.



1 SEC. 2. Section 2357 of the Probate Code is amended
2 to read:

3 2357. (a) As used in this section:

4 (1) “Guardian or conservator” includes a temporary
5 guardian of the person or a temporary conservator of the
6 person.

7 (2) “Ward or conservatee” includes a person for whom
8 a temporary guardian of the person or temporary
9 conservator of the person has been appointed.

10 (b) If the ward or conservatee requires medical
11 treatment for an existing or continuing medical condition
12 which is not authorized to be performed upon the ward
13 or conservatee under Section 2252, 2353, 2354, or 2355,
14 and the ward or conservatee is unable to give an informed
15 consent to such medical treatment, the guardian or
16 conservator may petition the court under this section for
17 an order authorizing such medical treatment and
18 authorizing the guardian or conservator to consent on
19 behalf of the ward or conservatee to such medical
20 treatment.

21 (c) The petition shall state, or set forth by medical
22 affidavit attached thereto, all of the following so far as is
23 known to the petitioner at the time the petition is filed:

24 (1) The nature of the medical condition of the ward or
25 conservatee which requires treatment.

26 (2) The recommended course of medical treatment
27 which is considered to be medically appropriate.

28 (3) The threat to the health of the ward or conservatee
29 if authorization to consent to the recommended course of
30 treatment is delayed or denied by the court.

31 (4) The predictable or probable outcome of the
32 recommended course of treatment.

33 (5) The medically available alternatives, if any, to the
34 course of treatment recommended.

35 (6) The efforts made to obtain an informed consent
36 from the ward or conservatee.

37 (7) *The name and addresses, so far as they are known*
38 *to the petitioner, of the persons specified in subdivision*

39 *(c) of Section 1510 in a guardianship proceeding or*

1 subdivision (b) of Section 1821 in a conservatorship
2 proceeding.

3 (d) Upon the filing of the petition, *unless an attorney*
4 *is already appointed* the court shall ~~notify the attorney of~~
5 ~~record for the ward or conservatee, if any, or shall appoint~~
6 the public defender or private counsel under Section
7 1471, to consult with and represent the ward or
8 conservatee at the hearing on the petition and, if that
9 appointment is made, Section 1472 applies.

10 (e) ~~The hearing on the petition may be held pursuant~~
11 ~~to an order of the court prescribing the notice to be given~~
12 ~~of the hearing. The order shall specify the period of notice~~
13 ~~of the hearing and the period so fixed shall take into~~
14 ~~account (1) the Notice of the Petition shall be given as~~
15 ~~follows:~~

16 (1) *Not less than 15 days before the hearing, notice of*
17 *the time and place of the hearing, and a copy of the*
18 *petition shall be personally served on the ward, if 12 years*
19 *of age or older, or the conservatee, and on the attorney*
20 *for the ward or conservatee.*

21 (2) *Not less than 15 days before the hearing, notice of*
22 *the time and place of the hearing, and a copy of the*
23 *petition shall be mailed to the following persons:*

24 (A) *The spouse, if any, of the proposed conservatee at*
25 *the address stated in the petition.*

26 (B) *The relatives named in the petition at their*
27 *addresses stated in the petition.*

28 (f) *For good cause, the court may shorten or waive*
29 *notice of the hearing as provided by this section. In*
30 *determining the period of notice to be required, the court*
31 *shall take to account both of the following:*

32 (1) *The existing medical facts and circumstances set*
33 *forth in the petition or in a medical affidavit attached to*
34 *the petition or in a medical affidavit presented to the*
35 *court and the (2).*

36 (2) *The desirability, where the condition of the ward*
37 *or conservatee permits, of giving adequate notice to all*
38 *interested persons.*

39 (f) ~~A copy of the notice of hearing or of the order~~
40 ~~prescribing notice of hearing, and a copy of the petition,~~

1 ~~shall be personally served or mailed, as prescribed in the~~
2 ~~order, on all of the following:~~

3 ~~(1) The ward or conservatee.~~

4 ~~(2) The attorney of record for the ward or~~
5 ~~conservatee, if any, or the attorney appointed by the~~
6 ~~court to represent the ward or conservatee at the hearing.~~

7 ~~(3) Such other persons, if any, as the court in its~~
8 ~~discretion may require in the order, which may include~~
9 ~~the spouse of the ward or conservatee and any known~~
10 ~~relatives of the ward or conservatee within the second~~
11 ~~degree.~~

12 (g) Notwithstanding subdivisions (e) and (f), the
13 matter may be submitted for the determination of the
14 court upon proper and sufficient medical affidavits or
15 declarations if the attorney for the petitioner and the
16 attorney for the ward or conservatee so stipulate and
17 further stipulate that there remains no issue of fact to be
18 determined.

19 (h) The court may make an order authorizing the
20 recommended course of medical treatment of the ward
21 or conservatee and authorizing the guardian or
22 conservator to consent on behalf of the ward or
23 conservatee to the recommended course of medical
24 treatment for the ward or conservatee if the court
25 determines from the evidence all of the following:

26 (1) The existing or continuing medical condition of
27 the ward or conservatee requires the recommended
28 course of medical treatment.

29 (2) If untreated, there is a probability that the
30 condition will become life-endangering or result in a
31 serious threat to the physical or mental health of the ward
32 or conservatee.

33 (3) The ward or conservatee is unable to give an
34 informed consent to the recommended course of
35 treatment.

36 (i) Upon petition of the ward or conservatee or other
37 interested person, the court may order that the guardian
38 or conservator obtain or consent to, or obtain and consent
39 to, specified medical treatment to be performed upon the
40 ward or conservatee. Notice of the hearing on the petition

1 under this subdivision shall be given for the period and in
2 the manner provided in Chapter 3 (commencing with
3 Section 1460) of Part 1.

4 SEC. 3. Section 2580 of the Probate Code is amended
5 to read:

6 2580. (a) The conservator or other interested person
7 may file a petition under this article for an order of the
8 court authorizing or requiring the conservator to take a
9 proposed action for any one or more of the following
10 purposes:

11 (1) Benefiting the conservatee or the estate.

12 (2) Minimizing current or prospective taxes or
13 expenses of administration of the conservatorship estate
14 or of the estate upon the death of the conservatee.

15 (3) Providing gifts for any purposes, and to any
16 charities, relatives (including the other spouse), friends,
17 or other objects of bounty, as would be likely beneficiaries
18 of gifts from the conservatee.

19 (b) The action proposed in the petition may include,
20 but is not limited to, the following:

21 (1) Making gifts of principal or income, or both, of the
22 estate, outright or in trust.

23 (2) Conveying or releasing the conservatee's
24 contingent and expectant interests in property, including
25 marital property rights and any right of survivorship
26 incident to joint tenancy or tenancy by the entirety.

27 (3) Exercising or releasing the conservatee's powers as
28 donee of a power of appointment.

29 (4) Entering into contracts.

30 (5) Creating for the benefit of the conservatee or
31 others, revocable or irrevocable trusts of the property of
32 the estate, which trusts may extend beyond the
33 conservatee's disability or life. A special needs trust for
34 money paid pursuant to a compromise or judgment for a
35 conservatee may be established only under Chapter 4
36 (commencing with Section 3600) of Part 8, and not under
37 this article.

38 (6) Transferring to a trust created by the conservator
39 or conservatee any property unintentionally omitted
40 from the trust.



1 (7) Exercising options of the conservatee to purchase
2 or exchange securities or other property.

3 (8) Exercising the rights of the conservatee to elect
4 benefit or payment options, to terminate, to change
5 beneficiaries or ownership, to assign rights, to borrow, or
6 to receive cash value in return for a surrender of rights
7 under any of the following:

8 (i) Life insurance policies, plans, or benefits.

9 (ii) Annuity policies, plans, or benefits.

10 (iii) Mutual fund and other dividend investment
11 plans.

12 (iv) Retirement, profit sharing, and employee welfare
13 plans and benefits.

14 (9) Exercising the right of the conservatee to elect to
15 take under or against a will.

16 (10) Exercising the right of the conservatee to disclaim
17 any interest that may be disclaimed under Part 8
18 (commencing with Section 260) of Division 2.

19 (11) Exercising the right of the conservatee (i) to
20 revoke *or modify* a revocable trust or (ii) to surrender the
21 right to revoke *or modify* a revocable trust, but the court
22 shall not authorize or require the conservator to exercise
23 the right to revoke *or modify* a revocable trust if the
24 instrument governing the trust (i) evidences an intent to
25 reserve the right of revocation *or modification*
26 exclusively to the conservatee, (ii) provides expressly
27 that a conservator may not revoke *or modify* the trust, or
28 (iii) otherwise evidences an intent that would be
29 inconsistent with authorizing or requiring the
30 conservator to exercise the right to revoke *or modify* the
31 trust.

32 (12) Making an election referred to in Section 13502 or
33 an election and agreement referred to in Section 13503.

34 (13) Making a will.

35 SEC. 4. Section 7200 of the Probate Code is repealed.

36 ~~7200. Except as otherwise expressly provided in this~~
37 ~~code, there is no right to a jury trial in proceedings under~~
38 ~~this code concerning the administration of the decedent's~~
39 ~~estate.~~

1 SEC. 5. Section 8465 of the Probate Code is amended
2 to read:

3 8465. (a) The court may appoint as administrator a
4 person nominated by a person otherwise entitled to
5 appointment or by the guardian or conservator of the
6 estate of *such* a person ~~otherwise entitled to appointment,~~
7 *or by a person who otherwise would have been entitled*
8 *to appointment but for that person's non-residency in the*
9 *United States (or by the guardian or conservator of the*
10 *estate of this person).* The nomination shall be made in
11 writing and filed with the court.

12 (b) If a person making a nomination for appointment
13 of an administrator is the surviving spouse, child,
14 grandchild, other issue, parent, brother or sister, or
15 grandparent of the decedent, the nominee has priority
16 next after those in the class of the person making the
17 nomination.

18 (c) If a person making a nomination for appointment
19 of an administrator is other than a person described in
20 subdivision (b), the court in its discretion may appoint
21 either the nominee or a person of a class lower in priority
22 to that of the person making the nomination, but other
23 persons of the class of the person making the nomination
24 have priority over the nominee.

25 SEC. 6. Section 17200 of the Probate Code is amended
26 to read:

27 17200. (a) Except as provided in Section 15800, a
28 trustee or beneficiary of a trust may petition the court
29 under this chapter concerning the internal affairs of the
30 trust or to determine the existence of the trust.

31 (b) Proceedings concerning the internal affairs of a
32 trust include, but are not limited to, proceedings for any
33 of the following purposes:

34 (1) Determining questions of construction of a trust
35 instrument.

36 (2) Determining the existence or nonexistence of any
37 immunity, power, privilege, duty, or right.

38 (3) Determining the validity of a trust provision.

39 (4) Ascertaining beneficiaries and determining to
40 whom property shall pass or be delivered upon final or

1 partial termination of the trust, to the extent the
2 determination is not made by the trust instrument.

3 (5) Settling the accounts and passing upon the acts of
4 the trustee, including the exercise of discretionary
5 powers.

6 (6) Instructing the trustee.

7 (7) Compelling the trustee to report information
8 about the trust or account to the beneficiary, if (A) the
9 trustee has failed to submit a requested report or account
10 within 60 days after written request of the beneficiary and
11 (B) no report or account has been made within six
12 months preceding the request.

13 (8) Granting powers to the trustee.

14 (9) Fixing or allowing payment of the trustee's
15 compensation or reviewing the reasonableness of the
16 trustee's compensation.

17 (10) Appointing or removing a trustee.

18 (11) Accepting the resignation of a trustee.

19 (12) Compelling redress of a breach of the trust by any
20 available remedy.

21 (13) Approving or directing the modification or
22 termination of the trust.

23 (14) Approving or directing the combination or
24 division of trusts.

25 (15) Amending or conforming the trust instrument in
26 the manner required to qualify a decedent's estate for the
27 charitable estate tax deduction under federal law,
28 including the addition of mandatory governing
29 instrument requirements for a charitable remainder trust
30 as required by final regulations and rulings of the United
31 States Internal Revenue Service, ~~in any case in which all~~
32 ~~parties interested in the trust have submitted written~~
33 ~~agreement to the proposed changes or written disclaimer~~
34 ~~of interest.~~

35 (16) Authorizing or directing transfer of a trust or trust
36 property to or from another jurisdiction.

37 (17) Directing transfer of a testamentary trust subject
38 to continuing court jurisdiction from one county to
39 another.

1 (18) Approving removal of a testamentary trust from
2 continuing court jurisdiction.

3 (19) Reforming or excusing compliance with the
4 governing instrument of an organization pursuant to
5 Section 16105.

6 (20) Determining the liability of the trust for any debts
7 of a deceased settlor. However, nothing in this paragraph
8 shall provide standing to bring an action concerning the
9 internal affairs of the trust to a person whose only claim
10 to the assets of the decedent is as a creditor.

11 (21) Determining petitions filed pursuant to Section
12 15687 and reviewing the reasonableness of compensation
13 for legal services authorized under that section. In
14 determining the reasonableness of compensation under
15 this paragraph, the court may consider, together with all
16 other relevant circumstances, whether prior approval
17 was obtained pursuant to Section 15687.

18 (22) If a member of the State Bar of California has
19 transferred the economic interest of his or her practice to
20 a trustee and if the member is a deceased member under
21 Section 9764, a petition may be brought to appoint a
22 practice administrator. The procedures, including, but
23 not limited to, notice requirements, that apply to the
24 appointment of a practice administrator for a deceased
25 member shall apply to the petition brought under this
26 section.

27 (23) If a member of the State Bar of California has
28 transferred the economic interest of his or her practice to
29 a trustee and if the member is a disabled member under
30 Section 2468, a petition may be brought to appoint a
31 practice administrator. The procedures, including, but
32 not limited to, notice requirements, that apply to the
33 appointment of a practice administrator for a disabled
34 member shall apply to the petition brought under this
35 section.

